

ORDINANCE NO. 07- 2863

AN ORDINANCE AMENDING CHAPTER 118 UTILITIES OF THE CITY OF BEDFORD CODE OF ORDINANCES, AS AMENDED, BY THE ADDITION OF ARTICLE VII, "MUNICIPAL SETTINGS DESIGNATION," PROVIDING FINDINGS AND DEFINITIONS, PROVIDING FOR THE PROHIBITION OF THE USE OF GROUNDWATER FOR POTABLE PURPOSES IN A MUNICIPAL SETTING DESIGNATION, PROVIDING FOR AN APPLICATION PROCESS FOR A MUNICIPAL SETTING DESIGNATION, PROVIDING FOR PUBLIC MEETINGS AND HEARINGS, PROVIDING FOR NOTICE TO PERSONS WITHIN THE AFFECTED COMMUNITY, PROVIDING FOR LIMITATIONS ON REAPPLICATION, PROVIDING FOR PROOF THAT RESPONSE ACTIONS HAVE BEEN COMPLETED ON A SITE, PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A FINE OF UP TO \$2,000.00 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, due to limited quantity and low quality, there are areas of shallow groundwater within the city and its extraterritorial jurisdiction that are not valuable as potable water sources, and therefore are not utilized for potable water; and,

WHEREAS, many commercial and industrial properties in Bedford are underlain with unusable groundwater that has become contaminated by historical on-site or off-site sources; and,

WHEREAS, the use of Municipal Setting Designations within Bedford allows for a state-evaluated corrective action process for groundwater that is directed toward protection of human health and the environment balanced with the economic welfare of the citizens of the city; and,

WHEREAS, where public drinking water is available, the potable use of groundwater in designated areas should be prohibited to protect public health and welfare when the quality of the groundwater presents an actual or potential threat to human health; and,

WHEREAS, people should have a say in decisions which affect their lives and property, and public input should influence governmental decisions; and,

WHEREAS, all statutory and constitutional requirements for the passage of this Ordinance have been adhered to, including but not limited to the Open Meeting Act; and,

WHEREAS, the City Council determines that the passage of this Ordinance is in the best interests of the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEDFORD, TEXAS:

SECTION 1. That all matters stated hereinabove are found to be true and correct and are incorporated herein by reference.

SECTION 2. That Chapter 118, is hereby amended by the addition of the following Article VII "Municipal Settings Designation":

Section 118-191. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Article, shall have the meanings hereinafter designated. *Act* means the Texas Water Quality Control Act, as amended, codified as Chapter 26, Texas Water Code.

Affected community means those persons entitled to notice in Section 118-194(b)(7) below.

Authorized representative means, for purposes of signing an application, if the applicant is a corporation, the president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; if the applicant is a partnership or sole proprietorship, a general partner or proprietor, respectively; and if the applicant is a local government, the chief executive officer or his authorized designee.

Chemical of concern means any chemical that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, and mode of toxicity.

Director means the Public Works Director or the Director's authorized representative.

Environmental risk assessment means the qualitative and quantitative evaluation performed in an effort to define the risk posed to human health and/or the environment by the presence or potential presence and/or use of pollutants.

Groundwater means water below the surface of the earth.

Municipal Setting Designation (MSD) means a designation as provided by Chapter 361, Subchapter W, of the Texas Health and Safety Code, which authorizes the executive director of the TCEQ to certify municipal setting designations in order to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant.

Permit (n.) means an order issued by the Texas Commission on Environmental Quality (TCEQ) in accordance with the procedures prescribed in the Act establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

Potable water means water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

Section 118-192. Declaration of Policy and Purpose.

It is the policy of the City and the purpose of this Article to maintain the quality of water in the City consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the City; and to require the use of all reasonable methods to implement this policy.

Section 118-193. Use of groundwater in Municipal Setting Designation as a potable water source prohibited.

- (a) A person commits an offense if the person intentionally, knowingly, or with criminal negligence uses groundwater in a Municipal Setting Designation as a potable water source.
- (b) A person commits an offense if the person intentionally, knowingly, or with criminal negligence uses groundwater in a Municipal Setting Designation for a purpose prohibited in the ordinance creating that Municipal Setting Designation.

Section 118-194. Application for City Council Approval of Municipal Setting Designation.

- (a) A person, including the City of Bedford, seeking City Council approval of a Municipal Setting Designation (MSD) for property within the corporate limits of the City of Bedford shall file six copies of an application with the Director. An application may be filed in person, by United States mail, or by a document delivery service.
- (b) An application shall be on a form provided by the Director, and shall contain:
 - (1) Applicant's name and address, and the name, address, daytime telephone number, and email address of a contact person;
 - (2) The location and legal description of the proposed outer boundaries of the MSD;

- (3) A statement as to whether applicant has filed an application with the executive director of the TCEQ for an MSD for the property;
 - (4) A statement as to whether a public drinking water supply system exists that satisfies the requirements of Texas Health and Safety Code Chapter 341 and that supplies or is capable of supplying drinking water to the property for which the MSD is sought, and property within one-half mile of the property for which the MSD is sought;
 - (5) A description of the groundwater sought to be restricted, including the identified chemicals of concern therein and the levels of contamination known to applicant, and the identified vertical and horizontal area of the contamination. If applicant has not documented groundwater contamination offsite that originates from the property for which an MSD is sought, the application shall include a statement as to whether contamination more likely than not exceeds a residential assessment level offsite and the basis for that statement;
 - (6) Identification of the person(s) responsible for the contamination of the groundwater, if known;
 - (7) A listing of:

 - (A) All owners of real property lying within one-half mile of the subject property, as the ownership appears on the last approved city tax roll;
 - (B) All state-registered private water wells within five miles from the boundary of the property for which the designation is sought, including a notation of those wells that are used for potable water purposes (if known), and a statement as to whether applicant has provided the owners with notice as provided in Texas Health and Safety Code Section 361.805;
 - (C) Of each retail public utility that owns or operates a groundwater supply well located not more than five miles from the property for which the MSD is sought, and a statement as to whether applicant has provided the utilities with notice as provided in Texas Health and Safety Code Section 361.805; and
 - (D) Each municipality, other than the City of Bedford, with a boundary located not more than one-half mile from the property for which the MSD is sought; or that owns or operates a groundwater supply well located not more than five miles from the property for which the MSD is sought; and a statement as to whether applicant has provided the municipalities with notice as provided in Texas Health and Safety Code Section 361.805;
 - (8) A copy of the application to the executive director of the TCEQ, if filed;
 - (9) A site map, drawn to scale, including a metes and bounds description of the property, the boundary of the proposed MSD, the location of groundwater on the property, and the extent of groundwater contamination to the limits that it has been defined. The map shall include a statement by a professional land surveyor registered by the Texas Board of Professional Surveying attesting to the accuracy of the metes and bounds property description; and
 - (10) Any other information that the Director deems pertinent.
- (c) The application shall be signed by an authorized representative of the applicant and shall contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in a manner designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my

knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- (d) An application shall be accompanied by:
 - (1) A set of printed mailing labels with the names and addresses of persons listed in subsection (b)(7) above;
 - (2) An electronic file of the names and addresses of persons listed in subsection (b) (7) above, in a format acceptable to the Director and compatible with City information systems; and
 - (3) An application fee in the amount of \$4,000.00.
- (e) An applicant may withdraw its application in writing by letter sent certified mail, return receipt requested, to the Director, and shall forfeit the application fee. If the Director has not issued public notice prior to the receipt of the withdrawal letter, the applicant may reapply at any time. If public notice has been issued, a new application is subject to the limitations of Section 118-200 below.

Section 118-195. Staff Review.

- (a) Upon receiving an application for an MSD approval, the Director will distribute a copy to his designee within the Public Works Department for staff review. The purpose of the review is to determine whether the application is complete, and whether any current or future City property or other interests have the potential to be impacted by the proposed MSD. City staff shall not be tasked with conducting an environmental risk assessment of the application.
- (b) City staff must send a written report to the Director within thirty calendar days of receiving the application, noting any discrepancies in the application, and advising of any City interests that may potentially be impacted by the proposed MSD.

Section 118-196. Director Action Following Application Review.

- (a) Following staff review, if the Director determines that the application is complete, he will schedule a public meeting and a public hearing. The public meeting must be held prior to the public hearing.
 - (1) A public meeting will be scheduled at a time no later than 45 days following the day the application was received by the City; and
 - (2) A public hearing will be scheduled at a time no later than 60 days following the day the application was received by the City.
- (b) The date that an application is deemed to have been received by the City is the date that the application was received by the Director, as indicated by the file date stamped on the application package by the Department of Public Works.
- (c) If the Director determines that the application is incomplete, he will return the application to applicant, noting the deficiencies in writing. The applicant shall have 30 days from the date of the deficiency letter to correct the deficiencies and resubmit the application. If the applicant fails to submit a corrected application within the allotted time, the application shall be deemed to be withdrawn and the application fee forfeited.

Section 118-197. Notice of Public Meeting and Public Hearing.

- (a) Notice of the public meeting and the public hearing on an MSD application may be combined and must include the date, time and location of the two events, the identity of the applicant, the location and legal description of the property for which the MSD is sought, the purpose of the

MSD, the type of contamination identified in the groundwater of the property for which the MSD is sought, and a statement that a copy of the application is available for public viewing at the Bedford Public Library. Notice will be made as follows:

- (1) The Director will provide published notice of a public meeting and a public hearing for a proposed MSD by means of a legal advertisement appearing in the official newspaper of the City, or a paper of general circulation, not less than 15 days before the public meeting;**
 - (2) The Director will provide posted notice of a public meeting and a public hearing by requesting that the City Secretary post the notice at City Hall, in a place readily accessible to the general public at all times, not less than 15 days before the public meeting; and**
 - (3) The Director will serve written notice of a public meeting and a public hearing for a proposed MSD not less than 15 days before the date set for the public meeting. Such notice shall be deemed served when it is deposited, properly addressed and regular postage paid, in the United States mail. Notice will be served to:**
 - (A) The applicant;**
 - (B) The list provided by applicant of owners of real property lying within one-half mile of the subject property, as the ownership appears on the last approved city tax roll;**
 - (C) The list provided by applicant of persons who own private registered water wells within five miles of the subject property;**
 - (D) The list provided by applicant of each retail public utility that owns or operates a groundwater supply well located not more than five miles from the property for which the MSD is sought; and**
 - (E) The list provided by applicant of each municipality with a boundary located not more than one-half mile from the property for which the MSD is sought or that owns or operates a groundwater supply well located not more than five miles from the property for which the MSD is sought.**
- (b) The Director will direct the erection of at least one sign upon the property for which an MSD has been requested. Where possible such sign or signs must be located in a conspicuous place or places upon such property at a point or points nearest any right-of-way, street, roadway or public thoroughfare adjacent to such property. Such sign(s) must be so erected not less than 15 days before the date set for the public meeting. Any such sign(s) will be removed subsequent to final action by the City Council on the MSD application. The sign(s) must state that an MSD has been requested for the site and that additional information can be acquired by telephoning the number listed thereon or visiting the web site address listed thereon. The erection and/or the continued maintenance of any such sign shall not be deemed a condition precedent to the holding of any public meeting or public hearing or to any official action concerning the MSD application.**
- (c) The Director will send a copy of the application to the Bedford Public Library and request that it be displayed for public review. The librarian for the facility will display the application in a publicly accessible area of the library until at least the completion of City Council action on the application, or the withdrawal of the application by applicant.**

Section 118-198. Conduct of Public Meeting.

- (a) The purpose of a public meeting is for the applicant to provide information to the affected community about MSD's and the application and to obtain input on the application prior to a formal hearing before the City Council.**
- (b) The public meeting will be held in the evening at a location convenient to the affected community.**

- (c) The applicant or applicant's representative must appear at the public meeting. If the applicant fails to appear at the public meeting either in person or by representative, the application shall be deemed withdrawn and the application fee forfeited.
- (d) The Director will be responsible for the conduct of the meeting. He will give the applicant or the applicant's representative the opportunity to present its reasons for requesting an MSD, and will give members of the affected community the opportunity to ask the applicant questions or make oral comments on the application.
- (e) The Director will make a tape recording of the public meeting available for the public.

Section 118-199. Conduct of Public Hearing.

- (a) Prior to the hearing, the Director will provide the City Council with a written report summarizing the request for the MSD approval, including any concerns raised by the reviewing departments, and will attach a copy of the application to the report.
- (b) The applicant or applicant's representative must appear at the hearing and present the request for an MSD approval. If the applicant fails to appear at the hearing either in person or by representative, the application shall be deemed withdrawn and the application fee forfeited.
- (c) Persons wishing to speak either in favor of or against the application will be provided the opportunity in accordance with City Council rules or guidelines for public hearings.
- (d) Following the conclusion of the public hearing, the City Council may deliberate the matter of the application, and then may either:
 - (1) Vote to approve or disapprove the application; or
 - (2) Postpone action on the application to a future date.
- (e) In order to approve an application, the City Council must:
 - (1) Adopt a resolution supporting the application to the Texas Commission on Environmental Quality; and
 - (2) Enact an ordinance prohibiting the potable use of designated groundwater from beneath the property. The ordinance must include a metes and bounds description of the property to which the ordinance applies; a listing of the contaminants; and a statement that the ordinance is necessary because the contaminant concentrations exceed potable water standards.
- (f) In the ordinance enacted pursuant to subsection (e)(2) above, City Council may place other reasonable restrictions on the use of designated groundwater from beneath the property.
- (g) City Council approval of an application shall not be deemed to waive the City's right to comment on an MSD application that has been filed with the Executive Director of the Texas Commission on Environmental Quality as provided by Texas Health and Safety Code Section 361.805.

Section 118-200. Limitation on Reapplication.

If after public hearing the City Council disapproves an application, or if the applicant has withdrawn its application after public notice has issued, no new MSD applications for the property shall be accepted by the city or scheduled for a hearing by the City Council within a period of 12 months of the date of disapproval or withdrawal.

Section 118-201. Additional Requirements.

- (a) A person who has received approval of an MSD from the City, shall, upon issuance from the Commission, provide the Director with a copy of the Certificate of Completion or other documentation issued for the property, showing that response actions have been completed.
- (b) A person commits an offense if they fail to provide the Director with the documentation required in subsection (a) above, within 30 days of its issuance by the Commission.

SECTION 3. That all ordinances or any parts thereof in conflict with the terms of this ordinance shall be and hereby are deemed repealed and of no force or effect; provided, however, that the ordinance or ordinances under which the cases currently filed and pending in the Municipal Court of the City of Bedford, Texas, shall be deemed repealed only when all such cases filed and pending under such ordinance or ordinances have been disposed of by a final conviction or a finding not guilty or nolo contendere, or dismissal.

SECTION 4. That any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed Two Thousand Dollars (\$2,000.00) and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

SECTION 5. That if any section, article, paragraph, sentence, clause, phrase or word in this ordinance, or application thereto any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of the ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 6. That the fact that the present ordinances and regulations of the City of Bedford, Texas are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the public creates an emergency, which requires that this ordinance become effective from and after the date of its passage, and it is accordingly so ordained.

SECTION 7. That this ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.

PRESENTED AND PASSED on First and Final Reading this 14th day of August 2007, by a vote of 7 ayes, 0_nays and 0 abstentions, at a regular meeting of the City Council of the City of Bedford, Texas.

Jim Story, Mayor

ATTEST:

Shanae Jennings, City Secretary

APPROVED AS TO FORM:

Stan Lowry, City Attorney